

**REMARKS**

Applicants have thoroughly considered the Examiner's remarks in the March 19, 2010 Office action. Claims 1, 6-15, 17, 22-32, and 35-45 are pending. Claim 16 has been canceled.

Applicants thank the Examiner for the courtesy of a telephonic interview on May 17, 2010. Applicants' representative Kevin K. Jones and Shen Wang discussed the invention and a cited reference in general with Examiner England. In particular, Applicants discussed claims 1, 17, and 32 and the Vogl (US patent No. 7,403,994) reference regarding the impact of the new second value of the bandwidth to the patentability of the application. No agreement was reached, no demonstration was given, and no exhibit was shown.

Applicants respectfully request reconsideration of the claims as amended and in view of the following remarks. If the Examiner deems the application to not be in condition for allowance, the Examiner is invited and encouraged to telephone the undersigned to discuss advancing prosecution of the present application.

**I. Rejection of Claims 16 U.S.C. § 101**

Claim 16 has been canceled.

**II. Rejection of Claims 1, 6-15, 17, 22-32, and 35-45 Under 35 U.S.C. 103(a)**

Claims 1, 6-15, 17, 22-32, and 35-45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,272,110 to Tunnicliffe et al. (hereinafter referred to as "Tunnicliffe"), in view of US patent No. 6,209,033 to Datta et al. (hereinafter referred to as "Datta"), in further view of US patent No. 7,403,994 to Vogl et al. (hereinafter "Vogl").

Applicants have amended claims 1, 17 and 32 and submit that the rejection of claims 1, 6-15, 17, 22-32, and 35-42 should be removed in light of the amendments. The rejection of claims 43-45 is respectfully traversed.

Tunnickliffe discloses a method and apparatus for managing part of a communications network. Datta discloses that the network capacity evaluation and planning is performed based upon the traffic across the links of the network. Vogl discloses a method of doing business over a network to process a request for transmitting information by determining the time required to transmit. Vogl further discloses the determination of network capacity in a future time, and decides whether to accept or reject the request to transmit the information.

In contrast, claims 1, 17 and 32 have been amended to recite "defining an adjusted predicted utilization (APU) at each of the future times, said defined APU being between the maximum and minimum acceptable utilization of the network" and to determine the change in network bandwidth capacity (DCNC) to be applied in the network at each of future times "to maintain the defined APU". Support for this amendment may be found at least in ¶¶ [0032] and [0054] of the present application, wherein the APU is defined as a function of the total user demand and the adjusted total network capacity.

None of the references teach such a limitation. The amendments to claims 1, 17, and 32 describe an additional operation for determining the change in network bandwidth capacity. Accordingly, Applicants request the rejection of claims 1, 17 and 32 be removed.

Claims 6-16 depend from and further limit Claim 1, and are patentable for at least the same reasons that Claim 1 is

patentable. Thus, Applicants request that the rejection of Claims 6-16 be removed.

Claims 22-31 depend from and further limit Claim 17, and are patentable for at least the same reasons that Claim 17 is patentable. Thus, Applicants request that the rejection of Claims 22-31 be removed.

Claims 35-41 depend from and further limit claim 32, and are patentable for at least the same reasons that claim 32 is patentable. Applicants request that the rejection of claims 35-41 be removed.

Claims 43, 44 and 45 which are directed to the future time being on "*fixed time intervals*". None of the cited art teaches or suggests that the future times are on fixed time intervals. The fixed time interval prediction as recited in claims 43-45 in the present application can provide, for example, more accurate prediction by reducing the impacts of sporadic high or low network traffic at particular future times. In addition, the network users can also align such fixed future times with their business time schedules, such as fiscal periods, application maintenance periods etc., to effectively adjust the network capacity.

In contrast, for example, the request for future data transmission in Vogl is described as being at any future time, but nowhere described as being at "*fixed time intervals*".

Further, claims 43, 44, and 45 depend from and further limit claims 1, 17, and 32, respectively, and are patentable for at least the same reasons that claims 1, 17, and 32 are patentable.

Applicants request the rejection of claims 43, 44 and 45 be removed.

### **III. Rejection of Claim 42 Under 35 U.S.C. 103(a)**

The rejection of Claim 42 under 35 U.S.C. 103(a) as being unpatentable over Tunnickliffe, Datta and Vogl, in further view U.S. Publication No. 2004/0202160 to Westphal (hereinafter referred to as "Westphal") is respectfully traversed.

Westphal discloses a system and method that provides virtual mobility to an application by using a mobile router tunneling protocol. It particularly discloses the load balancing between two identical networks based on the network load. While the Office action asserts that it would be obvious to utilize the cost of one network with the other, Westphal does not teach or suggest, however, *"determining a monetary cost measure of the determined change in network bandwidth capacity by analyzing past trends of cost increases or decreases"* as recited in claim 42 (emphasis added).

None of the references teach or suggest analyzing past trends of cost increases or decreases when determining the monetary cost measure.

Further, claim 42 depends from and further limits claim 15, and is patentable for at least the same reasons that claim 15 is patentable.

Thus, Applicants respectfully request that the rejection of claim 42 under 35 U.S.C. § 103(a) be removed.

### **Conclusion**

Applicants submit that the claims are allowable for at least the reasons set forth herein. Applicants thus respectfully submit that Claims 1, 6-15, 17, 22-32 and 35-45 as presented are in condition for allowance and respectfully request favorable reconsideration of this application.

Although the prior art made of record and not relied upon may be considered pertinent to the disclosure, none of these references anticipates or makes obvious the recited aspects of the invention. The fact that Applicants may not have specifically traversed any particular assertion by the Office should not be construed as indicating Applicants' agreement therewith.

The Commissioner is authorized to charge Deposit Account No. 01-2384 for any fees incurred during the pendency of this application.

Respectfully submitted,

/James J. Barta, Jr./

James J. Barta, Jr., Reg. No. 47,409  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, 26th Floor  
St. Louis, Missouri 63102  
(314) 621-5070

JJB/sw/mlg  
Via EFS